

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

VIVIAN A. GEORGE,)	
)	
Plaintiff,)	
)	
v.)	No. CIV-08-114-FHS-SPS
)	
MICHAEL ASTRUE, Commissioner)	
Social Security Administration)	
)	
Defendant.)	

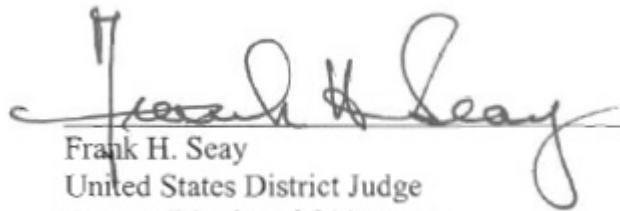
OPINION AND ORDER

Plaintiff's counsel filed a Motion For Attorney Fees Pursuant to 42 U.S.C. § 406(b) (Dkt. No. 31) on August 6, 2010. Judgment was entered in favor of Plaintiff on August 25, 2009, pursuant to the Court's order of the same date remanding this action to the Defendant under sentence four of 42 U.S.C. § 405(g). On November 9, 2009, the Court granted Plaintiff's motion for attorney's fees pursuant to the provisions of the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), in the amount of \$5,889.60. On June 22, 2010, the Court granted Plaintiff's counsel's motion for relief pursuant to Fed.R.Civ.P. 60(b)(6) and authorized Plaintiff's counsel to file her motion for attorney's fees under 42 U.S.C. § 406(b) within sixty days of her receipt of the Notice of Award containing the calculation of Plaintiff's past-due benefits. In her motion for attorney's fees under 42 U.S.C. § 406(b) (Dkt. No. 31), Plaintiff's counsel attaches the Notice of Award with a receipt date of August 3, 2010. Counsel's motion, filed on August 6, 2010, is therefore timely.

Plaintiff's counsel has moved the Court to approve an attorney fee award under 42 U.S.C. § 406(b)(1) in the amount of \$11,375.60 for counsel's representation of Plaintiff before the Court. Counsel's requested fees do not exceed either the amount contracted for in the parties' contingency agreement or the 25% limitation of section 406(b). Neither the Commissioner nor the Plaintiff have presented any objection to Plaintiff's counsel's request for fees in the amount of \$11,375.60. The Commissioner has filed an informative response on the various points of law to be considered, but has declined to take a position on the reasonableness of counsel's fee request. Plaintiff has not filed any response or objection. The Court has conducted an independent review of the record, including the contingency-fee contract between counsel and Plaintiff, and counsel's documented time records (attached to the EAJA request), and concludes counsel's motion is timely and that the requested attorney fee amount of \$11,375.60 is reasonable under the facts and circumstances of this case given the nature and quality of the representation and the results achieved. See Gisbrecht v. Barnhart, 535 U.S. 789, 807-809 (2002).

Consequently, Plaintiff's counsel's Motion For Attorney Fees Pursuant to 42 U.S.C. § 406(b) (Dkt. No. 31) is granted in the amount of \$11,375.60. Pursuant to Weakley v. Bowen, 803 F.2d 575, 580 (10th Cir. 1986), Plaintiff's counsel is directed to refund to Plaintiff the smaller amount of fees (\$5,889.60) previously awarded under EAJA.

It is so ordered this 19th day of August, 2010.



Frank H. Seay
United States District Judge
Eastern District of Oklahoma